IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.695 OF 1990

Sadashiv Gangaram Lambe,
since deceased, by his
legal heirs:-

1a. Akkabai Sadashiv Lambe,
aged 70 years,

1b. Nilkanth Sadashiv Lambe,
aged 40 years,

1c. Ashok Sadashiv Lambe,
aged 38 years,

All residents of
c/o Balasaheb Laxman Chougule,
At Khatau, Post Brahmanal,
Taluka Tasgaon,
District: Sangli.

1d. Mangala Vijay Shinthare,
aged 30 years,
r/at & Post: Tasgaon,
District: Satara.

1e. Sulabha Shrinivas Ugle,
aged 25 years,
r/at & Post: Saspade,
District: Satara. .... Petitioners

- Versus -

Subhash Akaram Gotkhinde,
residing at House No.653,
Sangliwadi, Sangli. .... Respondent

Shri G.R. Rege for the Petitioners.

Sarvasri N.V. Walawalkar for G.H. Keluskar
for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 23, 2004

JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. The point which arises for consideration in the matter is whether the notice demanding arrears of rent in excess of exact amount of rent due and payable by the tenant on the date of issuance of the notice would render such notice to be in contravention of the provisions of Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Rent Act" and, therefore, would be invalid and consequently the suit filed on the basis of such notice would not be maintainable.

2. The sub-section (1) of Section 12 provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the said Act. The sub-section (2) of Section 12 provides that:-

> "No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882."

Obviously the above quoted sub-section (2) of Section 12 makes it mandatory for the landlord to serve a notice demanding the arrears of standard rent or the permitted increases before proceeding to initiate the eviction proceedings against such tenant on the ground of non-payment of the rent. The contention of the learned Advocate for the petitioners is that the requirement of service of notice is mandatory and such a notice has to be in relation to the standard rent or the permitted increases "due" and not in relation to any rent or permitted increases which the landlord may think appropriate to demand from the tenant as the arrears thereof. In other words, unless the notice specifies the exact, actual and real amount due and payable by the

tenant to the landlord as the standard rent or the permitted increases, which had remained to be paid, the notice would be bad in law. In short, the notice cannot include any amount in excess of the amount legally due and payable by the tenant.

3. The analysis of Section 12(2) would disclose that it nowhere speaks of the demand to be "legally due and payable" by the tenant but it simply relates to the amount of standard rent and the permitted increases which had remained "due" to the landlord on the date of issuance of the notice. In fact the said provision has been the subject-matter of consideration in various decisions including those relied upon by the learned Advocate for the petitioners.

4. The first decision which is sought to be relied upon in support of the contention that the notice with demand in excess of actual rent would be invalid and that, therefore, the suit based on such a notice would not lie, is of the learned single Judge of this Court in **Shantilal Misrilal Chhajed v. Sadashiv Murlidhar Ratnaparkhi,** reported in 1989 Mah. R.C.J. 198. In the said decision, referring to the ruling of the Apex Court in **Chimanlal v. Mishrilal,** reported in AIR 1985 SC 136, it was observed that the Apex Court has held that if there is a substantial defect in the description

regarding the extent of the demised premises in respect of which rent has been claimed, then the notice would be invalid, and therefore it was held that on the same analogy the demand notice would be bad if highly excessive demand for arrears of rent, not actually due, is made.

5. Another decision relied upon on behalf of the petitioner is also of a learned single Judge of this Court in **Ramchandra Appaji Manjage since deceased by L.Rs. v. Mahavir Gajanan Mug,** reported in 1992 Mh.L.J. 434, wherein it was held that in the absence of service of a valid notice, the landlord cannot have cause of action to file a suit for ejectment of the lessee on the ground of non-payment of rent and therefore the Court lacks jurisdiction to entertain such suit. With reference to the decision of the Division Bench in the matter of **Chimanlal v. Narayan Jagannath,** reported in 1983 Mh.L.J. 254, holding that **"**if the landlord made a false and untenable demand of certain amount in the notice, the tenant had an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one.**"**, it was observed that the said statement of law propounded by the Division Bench was not a complete statement of law, and it was opined that the question to be asked in such cases is as to whether the notice of demand must necessarily be treated as

valid howsoever false and untenable is the demand incorporated in the notice, since in a given case the landlord may make shockingly exorbitant demand and in that case it cannot be said that the tenants would incur liability to be evicted and the notice of demand could be treated as valid merely because the tenant has not paid the amount claimed as due and payable by the tenant according to the calculations by the landlord.

6. In **Lalshankar v. Kantilal,** reported in AIR 1972 Bom. 373, by a notice dated 17-8-1965 the landlord demanded a total amount of Rs.176.90 ps. being the rent at the rate of Rs.17/- per month for the period ending on 15-9-1965. The trial Court held that the demand of rent was excessive because the rent claimed for the period 15-8-1965 to 15-9-1965 had not become due and payable to the landlord at the time of service of the said notice of demand and therefore, the said demand was not legal and therefore the notice was illegal and for the same reason the tenant could not have been said to be not ready and willing to pay the arrears of rent. However, it was held by the learned single Judge of this Court that:-

> "It is now well-settled that a liberal construction should be put upon a notice to quit in order that it should not be

> defeated by inaccuracies either in the description of the premises or the name of the tenant or the date of the expiry of the notice; and that the test of its sufficiency is not what its contents would mean to a stranger ignorant of all the facts and circumstances touching the premises to which the notice purports to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances and the mistakes, if any, should not be construed with a desire to find faults, but they should be construed liberally."

Therein reliance was placed in an unreported decision of the Apex Court in the matter of **Raghunath Ravji Dandekar v. Anant Narayan Apte** {(1966) Civil Appeal No.387 of 1964, decided on April 5, 1966 (SC)} wherein the Apex Court while considering the validity of such notice had observed that mere mistake in demanding more than what was due while issuing the notice to quit under the T.P. Act would not render the notice to be bad in law. The decision of the Apex Court in that regard, as revealed from the observation by the learned single Judge, reads thus:-

> "Their Lordships held that all that section 12(2) of the Rent Act requires is the notice by the lessor for payment of arrears of rent. Their Lordships further observed that it was true that such a notice shall contain the figure of the amount due as arrears of rent, but according to Their Lordships, if there was a mistake in the amount specified in the notice, that did not, in their opinion, make the notice under section 12(2) bad or because of that mistake the notice to quit under the Transfer of Property Act bad."

Considering the said ruling of the Apex Court, the learned single Judge held that:-

> "It appears to me that simply because by mistake or over-sight the landlord had demanded the rent for the month for which it was not due, that would certainly not make the notice invalid. The view taken by the learned Assistant Judge is, therefore, not correct."

7. In **Bhagabandas Agarwalla v. Bhagwandas Kanu and**

others, reported in AIR 1977 SC 1120, the Apex Court while dealing with the issue relating to the validity of the notice to quit issued by the lessor to the lessee, observed that:-

> "Now, it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed ut res magis valeat quam pereat. "The validity of a notice to quit", as pointed out by Lord Justice Lindley, L.J. in Sidebotham v. Holland, (1985) 1 QB 378 "ought not to turn on the splitting of a straw". It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or over refined subtlety, but it must be construed in a common sense way. See Harihar Banerji v. Ramsashi Roy, 45 Ind App 222 = (AIR 1918 PC 102)."

8. In **Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh,** reported in AIR 1983 Bom. 212, the Division Bench of this Court held that:-

> "The notice is a communication between the landlord and the tenant and both the parties know their rights and liabilities for the payment of rent. Hence any mistake in making a demand for the larger amount would not render the notice invalid."

9. In **Pratap Madhavrao Khandakar v. Ramchandra Govind Angolkar,** reported in 1986 Bom.R.C. 414, referring to the fact that there was no demand of arrears of rent in the notice sent to the tenant, it was held that there was non-compliance of the provisions of law comprised under Section 12(2) of the Rent Act.

10. In **Shashikant Govind Kulkarni and others v. Mahalaxmi Co-op. Bank Ltd.,** reported in 2001 (1) Mh.L.J. 131, the landlord by notice dated 13-1-1978 demanded rent for the period from 1-10-1976 to 31-12-1977 amounting to Rs.2250/- at the rate of Rs.150/- per month which was sought to be disputed by the tenant contending that there was excessive demand as the actual rent was Rs.140/- per month and that therefore the notice was invalid. The learned single Judge of this Court, relying upon the decision of the Apex Court in **Harbanslal Jagmohandas and another v. Prabhudas Shivlal,** reported in AIR 1976 SC 2005, held

that:-

> "It is well settled position that even if the demand is excessive it is the duty of the tenant to offer at least the agreed rent within a period of one month from the receipt of the suit notice or at least raise a dispute regarding the standard rent to save himself from the rigors of section 12(3)(a)."

11. In **Raghunath Ramchandra Natu v. Dattatraya Sitaram Salgaonkar and others,** reported in 2001 (2) Mh.L.J. 401, while dealing with the issue that there was no demand of arrears of rent as is otherwise required under Section 12(2) of the Rent Act, relying upon the decision in **Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh** (supra), it was held that the contention regarding the illegality and invalidity of the notice raised by the petitioners was devoid of substance.

12. In fact the point sought to be raised is no more res integra and stands settled long back pursuant to the unreported decision of the Division Bench in the matter of **Purshottam Bhanudas Palse v. Shakuntalabai Vishwanath Ayyaswami** {Writ Petition No.3658 of 1981 along with Writ Petition Nos.3828 and 3895 of 1981}

delivered on 13-12-1995. The Division Bench, after taking note of the various decisions including those referred to above, held that the said decision in **Raghunath Ravji Dandekar v. Anant Narayan Apte** (supra) is clear and it holds that merely because there is a mistake in the amount specified in the notice under Section 12(2) of the Rent Act, that by itself would not render the notice to be bad in law. It was clearly ruled that:-

> "Everything would depend on this aspect of the matter which would be a factual aspect of the matter. The court shall have to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Rent Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafide or dishonesty is recorded, then, in our opinion, the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of

> course the magnitude of inaccuracy coupled with other facts and circumstances appearing on record is capable of leading to a finding of malafide or dishonesty on the part of the landlord."

13. The undisputed facts of the case in hand are that the petitioners occupy the suit premises as the monthly tenants thereof since prior to 1971. On 7-12-1978 the respondent served a notice upon the petitioners seeking to terminate the tenancy by the end of 31-12-1978 claiming that the petitioners were in arrears of rent since 1-10-1975 for more than six months, that the premises were bona fide required for the use and occupation of the respondent for his residence and that the suit premises were sub-let by the petitioner since 1974 to one Meghraj Girwane and consequently claimed possession of the suit premises pursuant to the partition dated 22-9-1975 between the respondent and the father of the deceased petitioner and brothers. The standard rent of the suit premises was claimed to be Rs.9/- per month. On receipt of the notice neither the defendant paid any amount nor filed any application for fixation of the standard rent under Section 11(3) of the Rent Act within one month from the receipt of the notice. The petitioner, however, replied to the said

notice on 1-1-1979 contending that he had already paid to the respondent's father till the end of February, 1977 The petitioners had also sent a money order of Rs.216/- to the father of the respondent towards the rent due which was accepted by the father of the respondent while informing the petitioners by his letter dated 8-12-1997 that the said amount was appropriated towards the previous arrears of rent and further informing the petitioners to pay the rent thenceforth to the respondent. The petitioners, however, did not make any payment to the respondent even after receipt of the notice dated 7-12-1998. The respondent thereupon filed a suit on all the above three grounds on 1-1-1979. The suit was contested by the petitioners denying all the claims of the respondent and contending that the rent in respect of the suit premises was already sent to the respondent's father and he had accepted the same. It was also contended that the rent of Rs.9/- per month was not the standard rent. The petitioners, however, deposited a sum of Rs.495/- on 10-9-1979 being the arrears of rent for the period from 1-3-1975 to 30-9-1979. The trial Court, after hearing the parties and considering the evidence led by the parties, decreed the suit on the ground of default in payment of rent as well as bona fide need of the premises for the personal occupation of the respondent while rejecting the contention regarding sub-letting of the premises. The

trial Court also held that Rs.9/- per month was the standard rent, including taxes and the amount due was Rs.366/- by the petitioner to the respondent. The appeal filed against the said judgment and decree of the trial Court came to be dismissed while confirming the findings arrived at by the trial Court. It has also been brought on record by the respondent that the suit premises are in fact in a dilapidated condition and are not in use by the petitioner.

14. The impugned judgment though was sought to be assailed on various grounds in the writ petition, the learned Advocate for the petitioners restricted his arguments to only one ground relating to invalidity of the notice issued under Section 12(2) of the Rent Act.

15. The validity of the notice is sought to be disputed on two counts, namely the notice issued by the respondent cannot be said to have been issued by the landlord of the petitioner as it was the father of the respondent who was the landlord of the petitioners in respect of the suit premises and secondly that the petitioners were not in arrears of rent on the day the notice was issued. On both the counts, the Courts below have arrived at the findings contrary to the contention of the petitioners. As regards the excessive demand in the notice, apart from raising mere plea in that regard,

the petitioners have not been able to establish the same by producing any cogent evidence in that respect. Undoubtedly, the standard rent of the premises was already paid in the earlier litigation at the rate of Rs.9/- per month and the petitioners had not disputed the same by filing any application under Section 11(3) of the said Act. Considering the period for which the rent was demanded and the amount deposited by the petitioners on 10-9-1979, it is evident that there was no demand for any amount in excess of the amount due and payable on the day the notice was issued by the respondent. As regards the second ground relating to invalidity of the notice, the findings arrived at by the Court below and the materials on record reveal that the property was partitioned on 22-9-1975 and the suit property was allotted to the respondent and this fact was duly informed to the petitioner by the father of the respondent by notice dated 8-2-1977, besides the necessary mutations in the survey records in respect of the suit property were made on 15-10-1975 and the respondent had been paying tax in respect of the suit property since then and all these facts are apparent from the findings arrived at by the Courts below on analysis of the evidence on record. Obviously therefore, there is no substance in the contention of the petitioners that the respondent could not have issued the notice on 7-12-1998 as the landlord of the

petitioners since the suit premises were allotted to the respondent much prior to that date and the said fact was also informed to the petitioners by the father of the respondent as long back as in February, 1977, the respondent was legally competent to issue the said notice dated 7-12-1978 under Section 12(2) of the said Act and the notice so issued did not suffer from any infirmity in that regard.

16. There being no other challenge thrown to the impugned judgment, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.